

No. 91-5397

Supreme Court, U.S.

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In The
Supreme Court of the United States
October Term, 1992

EMERY L. NEGONSOTT,

Petitioner,

v.

HAROLD SAMUELS, WARDEN, et al.,

Respondents.

On Writ Of Certiorari To The
United States Court Of Appeals
For The Tenth Circuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

January 3, 1985	Complaint Filed in District Court of Brown County, Kansas
March 26, 1985	Verdict Filed, Defendant Guilty of Aggravated [sic] Battery
April 11, 1985	Motion To Dismiss Filed By Defendant
April 30, 1985	Memorandum In Opposition To Defendant's Motion To Dismiss Filed By State
August 5, 1985	Memorandum and Order Filed (Defendant's Motion to Dismiss For Lack of Jurisdiction Sustained)
August 9, 1985	Notice of Appeal to Kansas Supreme Court Filed By State of Kansas
March 28, 1986	Judgment Docketed and Opinion Filed By Kansas Supreme Court
July 11, 1986	Journal Entry of Sentencing Filed In District Court of Brown County, Kansas
September 19, 1986	Motion To Return Defendant To Court's Jurisdiction Filed in state district court
February 5, 1988	Petition for Writ of Habeas Corpus Filed in United States District Court
February 16, 1988	Order to Show Cause
March 8, 1988	Journal Entry filed, Sentence Modified To 3-10 Years By state district court

March 30, 1988 Answer and Return of Respondent
 April 1, 1988 Traverse of Petitioner
 September 22, 1988 Memorandum and Order Entered,
 Petition For Writ of Habeas Corpus
 Dismissed.
 October 21, 1988 Notice of Appeal Filed in United
 States District Court
 May 8, 1991 Judgment of Tenth Circuit Court of
 Appeals

Supreme Court of Kansas.
STATE of Kansas, Appellant,
 v.
Bennie NIOCE, Appellee,
 and
STATE of Kansas, Appellant,
 v.
Emery L. NEGONSOTT, Appellee.
 Nos. 58328, 58530.
 March 28, 1986.

Syllabus by the Court

Congress' intent in enacting 18 U.S.C. § 3243 (1982) was to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas. The United States retains concurrent jurisdiction with Kansas over crimes listed in the Federal Major Crimes Act. 18 U.S.C. § 1153 (1982). (Overruling *State v. Mitchell*, 231 Kan. 144, 642 P.2d 981 [1982]).

HERD, Justice:

These consolidated actions raise the issue of whether the State of Kansas has jurisdiction over criminal offenses committed by or against Indians on Indian reservations located within this state. While the facts are not essential for resolution of this issue, they are briefly stated as follows.

Appellee Bennie Nioce is an American Indian who allegedly committed aggravated battery upon another

American Indian while on the Pottawatomie County Indian Reservation in Jackson County, Kansas. The Jackson County District Court, relying on our holding in *State v. Mitchell*, 231 Kan. 144, 642 P.2d 981 (1982), dismissed the charges against Nioce. Identical charges were subsequently reinstated against Nioce, based upon a recent decision of the Federal District Court of Kansas, *Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas*, No. 83-4304 (D.Kan.1984). The federal court concluded *Mitchell* was wrongly decided. The Kansas trial court, however, once again dismissed the charges against Nioce, following *Mitchell*.

Appellee, Emery Negonsott is a Kickapoo Indian who is charged with aggravated battery for the shooting of another Kickapoo Indian. The shooting occurred within the territorial confines of the Kickapoo Indian Nation Reservation, located in Brown County, Kansas. He was convicted by jury of the crime charged but the district court, relying on *Mitchell*, subsequently set aside the conviction for lack of jurisdiction.

The State appeals, urging the court to reconsider its decision in *Mitchell* and give Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations in Kansas.

The primary issue is whether the State of Kansas has jurisdiction to try the appellants for the crime of aggravated battery. Resolution of this issue depends upon our interpretation of 18 U.S.C. § 3243 (1982):

"Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust

or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

"This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations."

The first provision of this statute is clear and appears to confer jurisdiction on the State of Kansas over all offenses committed by or against Indians on Indian reservations within the State. However, the second paragraph renders the statute ambiguous as it preserves federal jurisdiction over "offenses defined by the laws of the United States committed by or against Indians on Indian reservations."

Appellees argue the Federal Major Crimes Act, codified at 18 U.S.C. § 1153 (1982), grants exclusive federal jurisdiction over Indian offenses. That statute provides in part:

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, rape, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject

to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States."

We first had occasion to interpret 18 U.S.C. § 3243 in *State v. Mitchell*, 231 Kan. 144, 642 P.2d 981 (1982). There, the defendant was charged with murder in the second degree. Both the defendant and the victim were "Indians" and the offenses occurred within "Indian country" as those terms are defined in 18 U.S.C. § 1151 *et seq.* (1982). The defendant argued 18 U.S.C. § 1153 granted exclusive federal jurisdiction over Indian offenses, while the State contended 18 U.S.C. § 3243 gave Kansas concurrent jurisdiction. After examining the legislative history of the statutes in question, we determined that Congress, in enacting 18 U.S.C. § 3243, intended to retain exclusive jurisdiction over the crimes specifically enumerated in 18 U.S.C. § 1153, including murder. Therefore, we held the State acted beyond the scope of its jurisdictional authority in trying the defendant for murder.

The court, in so holding, relied primarily upon the case of *Youngbear v. Brewer*, 415 F.Supp. 807 (N.D.Iowa 1976), *aff'd* 549 F.2d 74 (8th Cir.1977). There, the federal court interpreted an identical grant of jurisdiction to Iowa, and held that Congress intended to preserve exclusive federal jurisdiction over the major crimes.

This court in *Mitchell* and the federal court in *Youngbear* cited the legislative history of 18 U.S.C. § 3243 as support for their interpretation of the statute. The original draft of the bill conferring jurisdiction on the State of Kansas specifically provided that *concurrent* jurisdiction was relinquished to the State and further provided that

the Federal Major Crimes Act be modified accordingly. 86 Cong. Rec. 5596, 76th Cong. 3d Sess. (May 6, 1940). A subsequent committee amendment, however, rejected the references to concurrent jurisdiction and modification of the Major Crimes Act. We concluded, as did the *Youngbear* court, that deletion of this language clearly indicated Congress' intent to preserve exclusive federal jurisdiction over the major crimes and to give Kansas jurisdiction only over minor offenses. *State v. Mitchell*, 231 Kan. at 150, 642 P.2d 981. See also *Youngbear v. Brewer*, 415 F.Supp. at 813.

The State now urges us to reexamine *Mitchell* in light of the Federal District Court of Kansas decision in *Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas*, No. 83-4304 (D.Kan.1984).

In *Iowa Tribe*, the plaintiff sought a declaratory judgment that 18 U.S.C. § 3243 does not make Kansas gambling laws prohibiting the sale of "pull-tab cards" applicable to such activities on the Iowa Indian reservation. The State counterclaimed, seeking a declaration that 18 U.S.C. § 3243 grants jurisdiction over Indians for acts occurring on the reservation which are recognized as crimes under Kansas law. The federal district court concluded that 18 U.S.C. § 3243 confers complete (but not exclusive) criminal jurisdiction upon the State of Kansas. In reaching its decision, the district court considered additional relevant legislative history to 18 U.S.C. § 3243 not considered by this court in *Mitchell* or the federal district court in *Youngbear*.

Specifically, the court considered the report of E.K. Burlew, Acting Secretary of the Interior, to Representative

Will Rogers, Chairman of the House Committee on Indian Affairs, and Senator Elmer Thomas, Chairman of the Senate Committee on Indian Affairs. This report consisted of a letter and memorandum discussing the purpose and effect of the proposed legislation.

As noted by the federal Court in *Iowa Tribe*, Burlew's letter indicates the purpose of the legislation was to allow Kansas courts to continue punishing offenses committed on Indian reservations, including offenses covered by federal statutes. The relevant portion of Burlew's letter follows:

With the approbation of the tribes concerned, the State courts of Kansas have in the past undertaken the trial and punishment of offenses committed on these reservations, *including those covered by Federal statutes*. The legality of this practice being questioned recently, the tribal councils of the four Kansas tribes have recommended the enactment of legislation authorizing its continuance by a transfer of jurisdiction to the State." (Emphasis added.) H.R. Rep. No. 1999, 76th Cong., 3d Sess. 2 (1940); S. Rep. No. 1523, 76th Cong., 3d Sess. 2 (1940).

The Department of Interior memorandum accompanying Secretary Burlew's letter leaves little doubt that 18 U.S.C. § 3243 was intended to confer jurisdiction to Kansas over all criminal offenses, including those listed in 18 U.S.C. § 1153. The memorandum provides in pertinent part:

"The proposed relinquishment of jurisdiction to the State of Kansas appropriately extends to those offenses which are provided for in existing Federal statutes as well as to those which are not. The State

courts have in the past exercised jurisdiction over offenses of both types to the general satisfaction of the tribes; the Indians desire that they continue to do so; and a division of jurisdiction with respect to particular crimes based upon the place of their commission is rendered undesirable by the mutual interspersions of restricted and unrestricted holdings. The prosecution in the Federal courts of those offenses which are now open to such prosecution will not be precluded under the bill in any particular instance where this course may be deemed advisable." (Emphasis added.) H.R. Rep. No. 1999, at 5 and S. Rep. No. 1523, at 4.

Additionally, the memorandum clarifies the reason why the original version of the House and Senate bills, which contained a reference to the relinquishment of concurrent jurisdiction to Kansas, was later modified to delete that reference:

"[The House and Senate Bills did] not express with entire accuracy the legal situation as it now exists or as intended to be created. The bill proposes to 'relinquish concurrent jurisdiction' to the State of Kansas, intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by State law. However, the Federal Government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, this is not a case of relinquishing to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State *complete* criminal jurisdiction, retaining, however, jurisdiction in the Federal courts to prosecute crimes by or against Indians defined by Federal law." (Emphasis added.)

H.R. Rep. No. 1999, at 3 and S. Rep. No. 1523, at 2.

The *Iowa Tribe* case is now on appeal to the Tenth Circuit Court of Appeals. This pending appeal has no bearing on our consideration of this issue since the supremacy clause of the United States Constitution is invoked only by a decision of the United States Supreme Court.

However, we find Judge O'Connor's opinion in *Iowa Tribe* persuasive and conclude from the additional legislative history considered therein that Congress' intent in enacting 18 U.S.C. § 3243 was to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas. The United States retains concurrent jurisdiction with Kansas over crimes listed in the Federal Major Crimes Act. 18 U.S.C. § 1153.

We hold that *State v. Mitchell*, 231 Kan. 144, 642 P.2d 981 (1982), is overruled and the judgments of the trial courts are reversed and the cases remanded for appropriate action.

* * *

United States District Court,
D. Kansas.

Emery L. NEGONSOTT, Petitioner,

v.

Harold SAMUELS, et al., Respondents.

Civ. A. No. 88-3049-S.

Sept. 22, 1988.

MEMORANDUM AND ORDER

SAFFELS, District Judge.

This matter is before the court on a petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2254. Petitioner, an inmate at the Kansas State Penitentiary, Lansing, Kansas, alleges that Kansas lacks jurisdiction over his criminal acts.

Petitioner is a Kickapoo Indian who was charged with aggravated battery for the shooting of another Kickapoo Indian within the territorial confines of the Kickapoo Indian Nation Reservation. Because the reservation is located within Brown County, Kansas, petitioner was tried before a jury in the district court of Brown County. Although the jury found petitioner guilty, the district court set aside the conviction for lack of jurisdiction. Upon appeal by the State, the Kansas Supreme Court upheld petitioner's conviction and held that Kansas had jurisdiction over all crimes committed by or against Indians on Indian Reservations in Kansas. *State v. Nioce*, 239 Kan. 127, 716 P.2d 585 (1986).

DISCUSSION

The only issue before this court is whether Kansas has jurisdiction over Indian offenses falling within the scope of the Federal Major Crimes Act. 18 U.S.C. § 1153. To decide this issue, the court must interpret federal statute 18 U.S.C. § 3243, which provides:

Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations.

The apparent ambiguity of the statute is created by the language of the second paragraph. Although the first paragraph appears to confer jurisdiction on the State of Kansas over all Indian offenses committed within the State, the second paragraph's reservation of federal jurisdiction makes the extent of this conveyance ambiguous.

Petitioner argues that 18 U.S.C. § 3243 provides for exclusive federal jurisdiction for crimes falling within the scope of the Federal Major Crimes Act. 18 U.S.C. § 1153. Because aggravated battery is covered by the Federal Major Crimes Act, petitioner argues that Kansas lacks jurisdiction over his offense. In contrast, respondent argues that 18 U.S.C. § 3243 grants Kansas jurisdiction

over all offenses committed by or against Indians on Indian reservations within the state.

This case is not the first time this court has been asked to interpret 18 U.S.C. § 3243. In *Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas*, No. 83-4304 (D.Kan. May 30, 1984) [available on WESTLAW, 1984 WL 2754], this court was faced with the issue of whether the State of Kansas had jurisdiction to prosecute members of the Iowa Tribe of Indians of Kansas and Nebraska for selling "pull-tab cards" in connection with bingo games conducted on the Tribe's reservation. Interpreting the statute in light of its legislative history, this court concluded that Kansas had jurisdiction over non-major state offenses committed by or against Indians on Indian reservations located in the state of Kansas. On appeal, the Tenth Circuit Court of Appeals affirmed this court's decision. *Iowa Tribe of Indians of Kansas and Nebraska v. State of Kansas*, 787 F.2d 1434 (10th Cir. 1986). Because the sale of "pull-tab cards" did not fall within the scope of the Federal Major Crimes Act, neither this court nor the Tenth Circuit Court of Appeals reached the issue raised by this case.

Like the Kansas Supreme Court in *Nioce* and the Tenth Circuit Court of Appeals in *Iowa Tribes*, this court finds persuasive the legislative history of 18 U.S.C. § 3243. Of particular relevance is the report of E.K. Burlew, Acting Secretary of the Interior, to Representative Will Rogers, Chairman of the House Committee on Indian Affairs. This report, contained in House Report No. 1999, 76 Cong., 3rd Sess. (1940), consists of a letter and memorandum discussing the purpose and effect of the proposed legislation.

In his letter, Burlew explained the two main reasons for introducing the proposed legislation. First, Burlew noted that the federal criminal statutes applicable to Indian reservations were limited in scope and left some major crimes as well as most minor offenses outside the jurisdiction of the federal courts. H.R. Rep. No. 1999, 76th Con., 3rd Sess. 2 (1940). Second, Burlew explained that, because more than two-thirds of the area within the reservation boundaries had passed beyond federal criminal jurisdiction due to the issuance of unrestricted patents, administrative convenience necessitated extending jurisdiction to Kansas over criminal matters. *Id.*

Burlew further explained that the proposed legislation was a codification of the ongoing practice in Kansas:

With the approbation of the tribes concerned, the State courts of Kansas have in the past undertaken the trial and punishment of offenses committed on these reservations, including those covered by Federal statutes. The legality of this practice being questioned recently, the tribal counsels of the four Kansas tribes have recommended the enactment of legislation authorizing its continuance by a transfer of jurisdiction to the State.

Id.

Later in his report, Burlew made it clear that the proposed legislation was intended to confer complete jurisdiction upon the State of Kansas, with the result that the Kansas courts and Federal courts would have concurrent jurisdiction over crimes falling within the scope of the Major Crimes Act:

The bill proposes to "relinquish concurrent jurisdiction" to the State of Kansas, intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by State law. However, the Federal Government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, this is not a case of relinquishing to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State complete criminal jurisdiction, retaining, however, jurisdiction in Federal courts to prosecute crimes by or against Indians defined by Federal law.

Id.

That this was the purpose of the statute is further supported by the Department of Interior memorandum accompanying Burlew's letter:

This proposed relinquishment of jurisdiction to the State of Kansas appropriately extends to those offenses which are provided for in existing Federal statutes as well as to those which are not. The State courts have in the past exercised jurisdiction over offenses of both types to the general satisfaction of the tribes; the Indians desire that they continue to do so; and a division of jurisdiction with respect to particular crimes based upon the place of their commission is rendered undesirable by the mutual interspersion of restricted and unrestricted holdings. The prosecution in the Federal courts of those offenses which are now open to such prosecution will not be precluded under the bill in any particular instance where this course may be deemed advisable.

Id. at 4.

Based upon the legislative history of the statute in question, the court concludes that Congress intended to grant the State of Kansas jurisdiction over all crimes committed by or against Indians on Indian reservations located in Kansas. The court also finds that the Kansas courts and the Federal courts have concurrent jurisdiction over crimes that fall within the scope of the Federal Crimes Act. 18 U.S.C. § 1153.

Having reached this conclusion, the court finds that the petition for writ of habeas corpus currently before the court must be dismissed. Pursuant to 18 U.S.C. § 3243, Kansas had jurisdiction over the aggravated battery committed by petitioner, notwithstanding the fact that the crime fell within the scope of the Federal Major Crimes Act. 18 U.S.C. § 1153.

IT IS THEREFORE ORDERED that the petition for writ of habeas corpus be dismissed and all relief denied.

United States Court of Appeals,
Tenth Circuit.

Emery L. NEGONSOTT,
Plaintiff-Appellant,

v.

Harold SAMUELS and the Attorney
General of the State of Kansas,
Defendants-Appellees.

No. 88-2666.

May 8, 1991.

Before HOLLOWAY, Chief Judge,
SEYMOUR and EBEL, Circuit Judges.

SEYMOUR, Circuit Judge.

This habeas case requires us to determine the scope of criminal jurisdiction granted by 18 U.S.C. § 3243 (1988) to the State of Kansas over state-law offenses committed by Indians on Indian lands. Petitioner Emery L. Negonsott claims that Kansas lacked subject matter jurisdiction to prosecute him for aggravated battery because that offense is within exclusive federal jurisdiction under the Federal Major Crimes Act, 18 U.S.C. § 1153 (1988). The district court held that the State had jurisdiction. We agree and conclude that the federal grant of criminal jurisdiction to the State of Kansas in section 3243 extends to state-law offenses that are also crimes enumerated in the Major Crimes Act.

I.

Negonsott belongs to the Kickapoo Tribe and resided during 1985 on the Kickapoo reservation in Brown

County, Kansas. He was arrested, charged, and convicted in that year of aggravated battery in the District Court of Brown County for shooting another Kickapoo Indian on the Kickapoo reservation. See Kan.Stat.Ann. § 21-3414 (1988). The state trial judge, relying on *State v. Mitchell*, 231 Kan. 144, 642 P.2d 981 (1982), vacated the conviction for lack of subject matter jurisdiction. On appeal, the Kansas Supreme Court reversed in a decision overruling *Mitchell*, and Negonsott's case was remanded for sentencing. See *Kansas v. Nioce*, 239 Kan. 127, 716 P.2d 585 (1986). Negonsott was sentenced to imprisonment for a term of three to ten years.

Negonsott filed a petition for a writ of habeas corpus in the United States District court for the District of Kansas, continuing his claim that the State of Kansas lacked jurisdiction to convict him for the offense of aggravated battery as defined by Kansas state law. The district court denied the writ and Negonsott appeals.

II.

The sole issue in this case is whether 18 U.S.C. § 3243 confers jurisdiction on the State of Kansas to prosecute petitioner, a Kickapoo Indian, for the state-law crime of aggravated battery against another Indian committed on the reservation. This question of statutory interpretation is one of law, which we review *de novo*. See *Ross v. Neff*, 905 F.2d 1349, 1352 (10th Cir.1990).

In analyzing the criminal jurisdiction of the State of Kansas over crimes involving Indians committed on Indian land, we begin with the language of the relevant statutes. It is elementary that "[i]n construing a statute

we are obliged to give effect, if possible, to every word Congress used." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S.Ct. 2326, 2331, 60 L.Ed.2d 931 (1979). If a statute is susceptible to two meanings, a court will choose a meaning that gives full effect to all the provisions of the statute. See *Mountain States Tel. & Tel. Co. v. Pueblo of Santa Ana*, 472 U.S. 237, 249, 105 S.Ct. 2587, 2594, 86 L.Ed.2d 168 (1985). Moreover, statutes should be construed so that their provisions are harmonious with each other. See *United States v. Stauffer Chemical Co.*, 684 F.2d 1174, 1184 (6th Cir.1982).

The Statute under which the State of Kansas claims subject matter jurisdiction provides:

"Jurisdiction is conferred on the State of Kansas over offenses committed by or against Indians on Indian reservations, including trust or restricted allotments, within the State of Kansas, to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the State.

"This section shall not deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations."

18 U.S.C. § 3243 (emphasis added). The second sentence of this statute appears to refer in part to the Indian Major Crimes act, which provides:

"(a) Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with

intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, . . . within the Indian Country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

"(b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense."

18 U.S.C. § 1153 (1988) (emphasis added). A separate statute governs the jurisdiction and venue of the Major Crimes Act as follows:

"All Indians committing any offense listed in the first paragraph of and punishable under section 1153 (relating to offenses committed within Indian country) of this title shall be tried in the same courts and in the same manner as are all other persons committing such offense within the exclusive jurisdiction of the United States."

18 U.S.C. § 3242 (1988) (emphasis added).¹

¹ The predecessor to sections 1153 and 3242 was initially passed in 1885 in response to the Supreme Court's opinion in *Ex Parte Crow Dog*, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030 (1883), which held that the limited jurisdiction of the federal courts did not extend to crimes by an Indian against another Indian on an Indian reservation. See *United States v. Kagama*, 118 U.S. 375, 383, 6 S.Ct. 1109, 1113, 30 L.Ed. 228 (1886). In the original enactment,

The crimes of assault with dangerous weapon and assault resulting in serious bodily injury, named in the Major Crimes Act, are defined for purposes of federal jurisdiction at 18 U.S.C. §§ 113(c) & (f) (1988). Federal jurisdiction over major crimes committed by Indians has been held to be exclusive. See *United States v. John*, 437 U.S. 634, 651, 98 S.Ct. 2541, 2550, 57 L.Ed.2d 489 (1978); *United States v. Antelope*, 430 U.S. 641, 649 n. 12, 97 S.Ct. 1395, 1400 n. 12, 51 L.Ed.2d 701 (1977); *Seymour v. Superintendent*, 368 U.S. 351, 359, 82 S.Ct. 424, 429, 7 L.Ed.2d 346 (1962); see also *Langley v. Ryder*, 778 F.2d 1092, 1096 n.2 (5th Cir. 1985) (holding that section 1153 preempts state criminal jurisdiction, citing *John*). Negonsott contends that the Kansas Act did not confer jurisdiction on the Kansas state courts over those corresponding state law offenses which are also included in the Major Crimes Act and which are otherwise within exclusive federal jurisdiction.

The first sentence of the Kansas Act at issue, here *see supra* at 4, unambiguously confers criminal jurisdiction on the State of Kansas over offenses committed by Indians against Indians on Indian reservation land "to the same extent as its courts have jurisdiction over offenses committed elsewhere within the State in accordance with the laws of the state." 18 U.S.C. § 3243 (emphasis added). In other words, the grant of state jurisdiction over all types of state crimes is complete. The second sentence of the Kansas Act appears intended to ensure that the congressional grant of jurisdiction to Kansas state courts over

what are now sections 1153 and 3242 were combined in one provision. Act of March 3, 1885, ch. 341, § 9, 23 Stat. 385.

state-law crimes contained in the first sentence would not "deprive" the United States courts of its jurisdiction over federally-defined offenses committed by or against Indians on Indian reservations. An ambiguity exists, however, because as we have noted federal jurisdiction over major crimes committed by Indians would otherwise be exclusive. Thus, we must resolve whether Congress intended to grant Kansas courts concurrent jurisdiction with federal courts over the crimes enumerated in the Major Crimes Act, or whether by the second sentence of the Kansas Act Congress intended to retain exclusive jurisdiction in the federal courts over those specific crimes.

The second sentence of the Kansas Act is of little help in resolving this conflict, since the words "shall not deprive the courts of the United States of jurisdiction" may be read in at least two ways. Congress may have intended, as argued by Negonsott, that the Kansas Act not deprive the federal court of any *exclusive* jurisdiction it enjoyed under existing law. Or, Congress may have meant to preserve the *scope* of federal jurisdiction over federally-defined crimes on Indian land, while modifying the *exclusive* jurisdiction of the federal courts in favor of concurrent jurisdiction where the federally defined crimes and crimes under Kansas law overlapped.

In resolving this ambiguity, we are mindful that "statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians." *Bryan v. Itasca County*, 426 U.S. 373, 392, 96 S.Ct. 2102, 2112, 48 L.Ed.2d 710 (1976) (quoting *Alaska Pac. Fisheries v. United States*, 248 U.S. 78, 89, 39 S.Ct. 40, 42, 63 L.Ed. 138 (1918)).

However, "statutory provisions which are not clear on their face may 'be clear from the surrounding circumstances and legislative history.'" *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 208 n. 17, 98 S.Ct. 1011, 1020 n. 17, 55 L.Ed.2d 209 (1978) (citing *DeCoteau v. District County Court*, 420 U.S. 425, 447, 95 S.Ct. 1082, 1094, 43 L.Ed.2d 300 (1975)); see also *Jones v. Intermountain Power Project*, 794 F.2d 546, 552 (10th Cir.1986). We accordingly look to legislative history to determine whether Congress intended to affect the exclusivity of federal jurisdiction over enumerated major crimes committed by Indians by passing the Kansas Act.

In enacting the Kansas Act, both the House and Senate Committees on Indian Affairs submitted reports. These reports incorporated a letter from the Acting Secretary of the Interior to the Chairman of the House Committee on Indian Affairs concerning the bill. The letter explained the problems the legislation was designed to address and how the bill intended to solve them. See Letter from E.K. Burlew, Acting Secretary of the Interior, to Rep. Will Rogers, Chairman of the House Committee on Indian Affairs, reprinted in H.R. Rep. No. 1999, 76th Cong. 3d Sess. 1-3 (1940) (House Report); see also Sen. Rep. No. 1523, 76th Cong. 3d Sess. 1-3 (1940). The Secretary noted that federal jurisdiction over crimes concerning Indians on Indian land had been limited, leaving "some major crimes as well as practically all minor offenses outside the jurisdiction of the Federal courts." House Report at 2. Because the state lacked jurisdiction over such offenses, maintenance of law and order depended on the tribal courts, which had not functioned

on Kansas reservations for many years. To fill this void, and

"[w]ith the approbation of the tribes concerned, the State courts of Kansas have in the past undertaken the trial and punishment of offenses committed on these reservations, *including those covered by Federal statutes. The legality of this practice being questioned recently, the tribal councils of the four Kansas tribes have recommended the enactment of legislation authorizing its continuance by a transfer of jurisdiction to the State.*"

Id. (emphasis added).

The Secretary also noted that the issuance of unrestricted patents for allotted lands interspersed with tribal and restricted lands created a jurisdictional checkerboard, resulting in practical difficulties. These difficulties

"can be most effectively met by conferring criminal jurisdiction over the entire area on the State. These considerations of administrative convenience *extend to those offenses which are now cognizable in the Federal courts under the reservation statutes as well as those which are not.*"

Id. (emphasis added). Although the proposed legislation extended to the types of offenses then cognizable under federal law, the Secretary specifically observed that "[e]nactment of the bill will not prevent the prosecution in the Federal courts of those acts which are within the cognizance of these courts under existing law." *Id.* at 2-3. These comments in the House and Senate Reports reflect an understanding that the proposed legislation would legalize the State's assertion of complete criminal jurisdiction under state law over the Indian tribes without

depriving the federal court of its more limited criminal jurisdiction by virtue of preexisting jurisdictional grants such as the Major Crimes Act.

Like the court in *Youngbear v. Brewer*, 415 F.Supp. 807 (N.D. Iowa 1976), *aff'd*, 549 F.2d 74 (8th Cir.1977) (construing analogous Iowa Act),² Negonsott relies heavily on a letter from Representative W.P. Lambertson of Kansas to the House Committee on Indian Affairs in support of his position that the scope of the Kansas State Court's jurisdiction under the Kansas Act does not extend to offenses enumerated in the Major Crimes Act. In his letter in support of the legislation, Lambertson stated that "[t]he Government here relinquishes to the state *full* jurisdiction over the Indians for *small* offenses." House Report at 1-2 (emphasis added). Negonsott interprets this letter as necessarily implying that federal courts were to retain exclusive jurisdiction over *major* offenses. Although it is possible, of course, that Congressman Lambertson meant to imply by this statement that the State of Kansas would assume no jurisdiction over the types of crimes covered in the Major Crimes Act, this implication is by no means a necessary one. It is also possible that Representative Lambertson understood the bill to confer "full" jurisdiction

² The Eighth Circuit in *Youngbear* interpreted a Congressional grant of criminal jurisdiction to the state courts of Iowa over the Sac and Fox Indians virtually identical to the grant of jurisdiction to the Kansas State Courts at issue here. See Act of June 30, 1948, ch. 759, 62 Stat. 1161, Publ.L. No. 846. The court relied on the legislative history of the Kansas Act, after which the Iowa Act was modeled, to support its conclusion that the Iowa Act did not confer state court jurisdiction over crimes enumerated in the Major Crimes Act. See 549 F.2d at 76.

over small crimes occurring among Indians to fill the void left by the tribal courts, while conferring concurrent power to prosecute the types of crimes covered by the Major Crimes Act. If we give Negonsott's interpretation credence, we are at a loss to explain why it contravenes the memorandum and letter from the Secretary of the Interior, incorporated along with Representative Lambertson's letter into the House and Senate Reports, which clearly evince an understanding that Kansas under the Act as amended could exercise criminal jurisdiction over all state-law crimes occurring on Indian lands.

The Eighth Circuit in *Youngbear* and Negonsott also attach much significance to the amendment of the title of the bill, replacing the phrase "concurrent jurisdiction" with the word "jurisdiction,"³ and eliminating the reference to modification of the Major Crimes Act. See 86 Cong.Rec. 5596-97, 76th Cong. 3d Sess. (May 6, 1940).⁴

³ As originally drafted, the Kansas Act was entitled a "bill to relinquish concurrent jurisdiction to the State of Kansas to prosecute Indians or others for offenses committed on Indian reservations." H.R.Rep. No. 999, 76th Cong., 3d Sess., accompanying H.R. 3048. This language was amended to read: "A bill to confer jurisdiction on the State of Kansas over offenses committed by or against Indians on Indian reservations." *Id.*

⁴ As originally drafted, the Kansas Act would have provided as follows:

"Be it enacted . . . that *concurrent* jurisdiction is hereby relinquished to the State of Kansas to prosecute Indians and others for offenses by or against Indians or others, committed on Indian reservations in Kansas, including trust or restricted allotments, to the same extent as its courts have jurisdiction for offenses committed elsewhere within the State in accordance

However, the Secretary, who recommended the revisions, offered an explanation in his letter. Regarding amendment of the title "for clarification," he stated:

"[T]he bill, as now worded, does not express with entire accuracy the legal situation as it now exists or as intended to be treated. The bill proposes to relinquish concurrent jurisdiction to the State of Kansas, *intending thereby to give the State jurisdiction of all types of crimes, whether major or minor, defined by state law.* However, the Federal Government has exercised jurisdiction only over major crimes. Therefore, strictly speaking, *this is not a case of relinquishing to a State a jurisdiction concurrent with that of the United States, but a case of conferring upon the State complete criminal jurisdiction, retaining however, jurisdiction in the Federal courts to prosecute crimes by or against Indians defined by Federal law.*"

House Report at 3 (emphasis added). The term "concurrent jurisdiction" was thus removed because it did not accurately describe the bill in any of its forms. Federal courts did not exercise jurisdiction over all state-law offenses, and therefore those courts would not be sharing

with the laws of the State; and section 328 of the Act of March 4, 1909 (35 Stat. 1151) as amended by the Act of June 28, 1932 (47 Stat. 337) and sections 2145 and 2146 of the United States Revised Statutes (U.S.C., title 18, section 548, title 25, secs. 217, 218), are modified accordingly insofar as they apply to Indian reservations or Indian county in the said State of Kansas."

86 Cong.Rec. 5596, 76th Cong. 3d Sess (May 6, 1940)(emphasis added).

concurrent jurisdiction with Kansas over all crimes. Conversely, federal courts under the Major Crimes Act possessed exclusive jurisdiction over the crimes enumerated therein. At the time of its enactment, therefore, the Kansas Act was to confer *concurrent* jurisdiction *only* as to those crimes covered by the Major Crimes Act. As explained by the Secretary, Congress' decision to excise the word "concurrent" from the title of the Act was to clarify rather than to change its substance. Reference to modification of the Major Crimes Act was apparently dropped as unnecessary when the second sentence of the Kansas Act was added instead.

Negonsott maintains that construing the Kansas Act to confer jurisdiction on the state courts over crimes enumerated in the Major Crimes Act is inconsistent with the well-settled rule that " 'statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, doubtful expressions being resolved in favor of the Indians.' " 426 U.S. at 392, 96 S.Ct. at 2112 (quoting *Alaska Pac. Fisheries*, 248 U.S. at 89, 39 S.Ct. at 42. If we were to adopt the state's interpretation, Negonsott contends, the historically exclusive stewardship of the federal government over major crimes committed on a reservation would be eliminated, and Indians could be subject to double prosecution under both federal and state law.

We do not believe that our interpretation is inconsistent with this canon of statutory construction. The Kansas tribes themselves, in the interest of establishing law and order on Indian lands, "expressed a wish that the jurisdiction hitherto exercised by the State courts [over both major and minor crimes] be continued." House Report at

4-5. We are unwilling to conclude that state court criminal jurisdiction *conferred by Congress in response to tribal requests* invades the special relationship between the tribes and the federal government. If anything, the Kansas Act reflects congressional responsiveness to Tribal needs for unified law enforcement as expressed by the Tribes themselves.

As to any prejudice the tribes may suffer from overlapping state and federal jurisdiction, the overlap resulted from legislation requested of Congress by the Tribes. No instance of double prosecution under the scheme Kansas has been brought to our attention and, in any event, this hypothetical burden is not peculiar to Indian lands, but applies to nearly all Americans who live under overlapping federal and state jurisdictions.⁵

⁵ It is arguable that double jeopardy would attach to successive prosecutions under the Kansas Act and the Major Crimes Act. Negonsott cites *United States v. Wheeler*, 435 U.S. 313, 98 S.Ct. 1079, 55 L.Ed.2d 303 (1978), in support of his double jeopardy argument. *Wheeler* concerned successive prosecutions under tribal law in tribal court and under federal law in federal court. The Court held that double jeopardy did not attach because the Tribe retained inherent tribal sovereignty apart from the exercise of federal sovereignty in the subsequent prosecution. *Id.* at 329-30, 98 S.Ct. at 1089-90. The present case, by contrast involves the exercise of state authority pursuant to a congressional delegation of authority under federal sovereign power. The Kansas state court is arguably an arm of the federal government when it prosecutes under the Kansas Act, thereby barring subsequent federal prosecutions in federal court. *See id.* at 327 n. 26, 98 S.Ct. at 1088 n. 26. We need not and do not decide this issue.

In sum, we conclude that the purpose of the Kansas Act as reflected in its legislative history indicates that Congress intended to confer jurisdiction on the Kansas state court to prosecute petitioner for aggravated battery, a state-law crime also enumerated and defined for purposes of federal court jurisdiction in the Major Crimes Act. We therefore AFFIRM the district court's dismissal of the petition.

Supreme Court of the United States

No. 91-5397

Emery L. Negonsott,

Petitioner

v.

Harold Samuels, Warden, et al.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Tenth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

June 29, 1992
